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Attorneys for Defendant
OFFICE DEPOT, INC

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARY SANBROOK, on behalf of
herself and all others similarly situated,

Plaintiffs,

v.

OFFICE DEPOT, INC., a corporation,
and DOES 1-20,

Defendant.

Case No. C 07-05938 RMW

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER
AS MODIFIED BY THE COURT

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~~PROPOSED~~ STIPULATED PROTECTIVE ORDER

Upon the showing of good cause in support of the entry of a protective order to protect the discovery and dissemination of highly confidential, confidential information, or information which will improperly annoy, embarrass, or oppress any party, witness, or person providing documents and/or other information in response to written discovery propounded in this case and/or providing deposition testimony, pursuant to the stipulation of all parties to the case, IT IS HEREBY ORDERED:

1. This Protective Order shall govern all documents, materials, and information, including, without limitation, documents produced, answers to interrogatories, responses to requests for admission, deposition testimony, deposition transcripts, and other information, whether in oral, written, paper or electronic form, and whether disclosed or exchanged pursuant to the early disclosure requirements and the discovery duties created by the Federal Rules of Civil Procedure or voluntarily between the parties during early mediation or otherwise.

2. As used in this Protective Order, "document" is defined as provided in F.R.C.P. 34(a). A draft or non-identical copy is a separate document within the meaning of this term.

3. Any party, or any third party subject to discovery in this action ("The Litigation") may designate as "Confidential" or "Highly Confidential" any document or other material that such party believes to contain "Confidential Information" or "Highly Confidential Information" as defined below, including without limitation, any information voluntarily produced by a party or non-party, any information produced pursuant to a discovery request (whether in paper or

1 electronic form), any document marked as an exhibit at any deposition taken in this
2 proceeding, any information given orally at a deposition or otherwise, or the
3 transcript of any deposition taken in this proceedings, any information provided in
4 writing in response to any interrogatories, any documents produced in response to an
5 inspection demand or subpoena, or otherwise, if it reflects, refers to or evidences any
6 “Confidential Information” or “Highly Confidential Information.”
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8 4. With respect to the examination of witnesses upon oral deposition,
9 when Confidential Information or Highly Confidential Information is supplied
10 and/or when the deponent’s testimony contains Confidential Information or Highly
11 Confidential Information, the reporter shall be informed of this Protective Order by
12 the party seeking confidentiality and will be required to operate in a manner
13 consistent therewith. The reporter shall place on the cover of any deposition
14 transcript that contains any Confidential Information the words “CONTAINS
15 CONFIDENTIAL INFORMATION” and place on the cover of any deposition
16 transcript that contains Highly Confidential Information the words “CONTAINS
17 HIGHLY CONFIDENTIAL INFORMATION.” Counsel for the respective parties
18 to this action shall take appropriate steps to prevent any portions of any deposition
19 transcript designated “Confidential” from being disclosed to any person except as
20 provided in this Stipulated Protective Order.
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22 5. The party to whom such Confidential Information or Highly
23 Confidential Information is disclosed and its attorneys shall maintain the
24 Confidential Information and Highly Confidential Information pursuant to the terms
25 of this Protective Order
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27 6. All “Confidential” or “Highly Confidential” documents produced by
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1 any party or non-party in The Litigation shall be used by the party or agent receiving
2 or reviewing such documents only for the purposes of preparing for and conducting
3 The Litigation.

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5 7. For purposes of this Protective Order, the term "Confidential
6 Information" means information that counsel of record for the designating party has
7 determined, in good faith, constitutes non-public Confidential proprietary data,
8 proprietary business information, and/or research, development, personnel, or
9 commercial information. Information shall be designated as "Confidential" only
10 upon the good faith belief that the information falls within the scope of Confidential
11 information under the Federal Rules of Civil Procedure and the precedents thereto.

12
13 8. For purposes of this Protective Order, the term "Highly Confidential
14 Information" means ^{extremely sensitive "Confidential Information" whose disclosure to} information that counsel of record for the designating party has
15 determined, in good faith, constitutes, refers or relates to non-public highly sensitive
16 commercial and/or competitive information such as, but not limited to: (a) trade
17 secrets; (b) information about new services or products that are in the planning stage
18 or that the designating party plans to introduce but that are not yet offered for sale;
19 (c) the designating party's current or future marketing plans for any of its services or
20 products; (d) information concerning the pricing of services or products, sales
21 volumes and advertising expenditures; (e) financial information; and (f) consumer
22 and marketing research and documents that refer or relate thereto (except those
23 conducted specifically for The Litigation).

24
25 9. "Confidential" or Highly Confidential Information" shall be designated
26 specifically by marking the thing and/or each page of a document produced as
27 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." In lieu of marking and
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1 producing the original of a document, a marked copy thereof may be produced,
2 provided that the unmarked original is kept available by the producing party for
3 inspection. If document is produced electronically, such document may be
4 designated by appending the label "CONFIDENTIAL" or "HIGHLY
5 CONFIDENTIAL" to the media on which the document is produced, or to any
6 image of such document.

7
8 10. In the event that an original copy of a documents is designated
9 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" as set out in Paragraph 9, and
10 one or more copies of the document or the original are also produced but not so
11 designated, the copies or original shall also be treated as "CONFIDENTIAL" or
12 "HIGHLY CONFIDENTIAL" if the designating party so informs the receiving
13 party, or the receiving party is otherwise actually aware of such fact.

14
15 11. Such "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL"
16 designation shall be made at the time documents or materials are produced or within
17 fifteen (15) days thereafter. In the case of depositions, the designations shall be
18 made by so stating on the record of the deposition. Notwithstanding the foregoing,
19 documents, materials or deposition testimony that are not designated
20 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" at the time of production may
21 subsequently be designated as "CONFIDENTIAL" or "HIGHLY
22 CONFIDENTIAL" within 15 days of the date of production, or within such other
23 time period allowed by the Court upon motion, by the disclosing party in a letter to
24 the receiving party that specifically describes each documents materials, or
25 testimony so designated, and the receiving party shall treat those documents as
26 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" as of the date of their
27 designation.

1 12. Documents or materials marked as "CONFIDENTIAL" pursuant to the
2 terms of the Protective Order, and any information contained therein or derived
3 therefrom shall not be disclosed to anyone other than to "Qualified Persons--
4 CONFIDENTIAL," who are defined to consist of:

5
6 (a) Counsel to the parties to The Litigation, including in-house
7 counsel, and clerical, secretarial and paralegal staff employed by such counsel;

8
9 (b) Any outside expert or consultant and their staff retained by
10 counsel to assist in the prosecution or defense of this action after being advised of
11 the terms of this Stipulated Protective Order and agreeing in writing to abide by its
12 terms to not disclose any Confidential material to any persons not included in this
13 paragraph;

14
15 (c) Any witness at deposition or at trial who is employed or was
16 previously employed by the producing party at the time the Confidential document
17 was prepared or disseminated, as well as any person who created, sent or received
18 the document in the ordinary course of business as demonstrated by the evidence,
19 provided that any such witness or person is advised of the terms of this Stipulated
20 Protective Order and agrees in writing to abide by its terms to not disclose any
21 Confidential material to any persons not included in this paragraph;

22
23 (d) Any person noticed for depositions or designated as trial
24 witnesses to the extent reasonably necessary in preparing to testify, provided that
25 any such witness or person is advised of the terms of this Stipulated Protective Order
26 and agrees in writing to abide by its terms to not disclose any Confidential material
27 to any persons not included in this paragraph;

1 (e) Any court reporter or typist recording or transcribing testimony;

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3 (f) The Court and court personnel (in the manner provided by
4 Paragraph 9 hereof);

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6 (g) Such other persons agreed to by all parties in writing or ordered
7 by the Court; and

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9 (h) Named parties to this litigation (or their representatives) who
10 have a need to know the information, including Plaintiff Mary Sanbrook, after being
11 advised of the terms of this Stipulated Protective Order and agreeing in writing to
12 abide by its terms to not disclose any Confidential Material to any persons not
13 included in this paragraph. Counsel for Ms. Sanbrook has represented that Ms.
14 Sanbrook will abide by the terms of this Stipulated Protective Order and will not
15 disclose any Confidential Material to any persons not included in this paragraph.

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17 13. Documents or materials designated as "HIGHLY CONFIDENTIAL"
18 pursuant to the terms of the Protective Order, and any information contained therein
19 or derived therefrom shall not be disclosed summarized, described, or otherwise
20 communicated or made available in whole or in part to anyone except "Qualified
21 Persons-HIGHLY CONFIDENTIAL," who are to consist of:

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23 (a) Counsel to the parties to The Litigation, excluding in-house
24 counsel, and clerical, secretarial and paralegal staff employed by such counsel;

25

26 (b) Any outside expert or consultant and their staff retained by
27 counsel to assist in the prosecution or defense of this action after being advised of

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1 the terms of this Stipulated Protective Order and agreeing in writing to abide by its
2 terms to not disclose any Highly Confidential material to any persons not included in
3 this paragraph;

4
5 (c) Any person who created, sent or received the document in the
6 ordinary course of business as demonstrated by the evidence, provided that any such
7 witness or person is advised of the terms of this Stipulated Protective Order and
8 agrees in writing to abide by its terms to not disclose any Highly Confidential
9 material to any persons not included in this paragraph.

10
11 (d) Any court reporter or typist recording or transcribing testimony;

12
13 (e) The Court and court personnel (in the manner provided by
14 Paragraph 9 hereof); and

15
16 (f) Such other persons agreed to by all parties in writing, or ordered
17 by the Court.

18
19 (g) Named parties to this litigation (or their representatives) who
20 have a need to know the information, including Plaintiff Mary Sanbrook, after being
21 advised of the terms of this Stipulated Protective Order and agreeing in writing to
22 abide by its terms to not disclose any Confidential Material to any persons not
23 included in this paragraph. Counsel for Ms. Sanbrook has represented that Ms.
24 Sanbrook will abide by the terms of this Stipulated Protective Order and will not
25 disclose any Confidential Material to any persons not included in this paragraph.

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27 14. A party may object to the designation of particular "CONFIDENTIAL"
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1 or "HIGHLY CONFIDENTIAL" information by giving written notice to the party
2 designating the disputed information within fifteen (15) days of its designation. The
3 written notice shall identify the information to which the objection is made. If the
4 parties cannot resolve the objection within ten (10) business days after the time the
5 notice is received, it shall be the obligation of the party objecting to designating the
6 information as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" to file an
7 appropriate motion requesting that the Court determine whether the disputed
8 information should be subject to the terms of this Protective Order. During the
9 pendency of any such motion, the disputed information shall be treated as
10 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" under the terms of this
11 Protective Order until the Court rules on the motion.

12
13 15. In connection with a motion filed under this provision and provision
14 14, the party designating the information as "CONFIDENTIAL" or "HIGHLY
15 CONFIDENTIAL" shall bear the burden of establishing that good cause exists for
16 the disputed information to be treated as such.

17
18 16. Inadvertent disclosure and/or production of documents claimed to be
19 subject to either the attorney-client privilege or work product doctrine does not
20 waive the applicability of such privilege or doctrine either generally or relative to the
21 inadvertently disclosed and/or produced documents. If any such documents are
22 inadvertently disclosed to the receiving party by the producing party, the producing
23 party may request that the receiving party return such documents to the producing
24 party, and the receiving party must immediately comply by, to the extent reasonably
25 practicable and consistent with the technology used by the producing party to
26 produce the documents, returning such documents and destroying any copies, notes
27 or memoranda concerning the privileged information. If, however, the receiving
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1 party disagrees with the claim of privilege or work-product protection as to an
2 inadvertently disclosed and/or produced document, the receiving party may object to
3 the return of the document by giving written notice to the party claiming the
4 privilege. The written notice shall identify the document to which the objection is
5 made. If the parties cannot resolve the objection within ten (10) business days after
6 the time the notice is received, it shall be the obligation of the party claiming the
7 privilege or protection to file an appropriate motion requesting that the Court
8 determine the validity of the privilege or protection claim. If the party claiming the
9 privilege or protection fails to file such a motion within the prescribed time, the
10 receiving party may retain the disputed document, which shall not thereafter be
11 treated as privileged or protected. In connection with a motion filed under this
12 provision, the party claiming the privilege or protection shall bear the burden of
13 establishing that good cause exists for the disputed document to be treated as
14 privileged or protected. The disputed document shall be treated as privileged or
15 protected until either the Court rules on the motion filed under this provision, or the
16 time for filing such a motion has expired. The parties acknowledge that issues of
17 privilege may also arise under foreign law and/or may be litigated in the foreign
18 proceedings. Nothing in this agreement is intended to affect any party's right to
19 claim privilege or work product protection in the foreign proceedings, or any counter
20 argument or argument of waiver in respect of any such claim.

21
22 17. Documents or materials designated as "CONFIDENTIAL" or
23 "HIGHLY CONFIDENTIAL" in accordance with the terms of this Protective Order,
24 whether discussed in briefs or otherwise, shall be filed under seal in accordance with
25 the Local Rules of this Court. Any party or member of the public may challenge the
26 filing of papers in camera under the Local Rules. In the event of a challenge, the
27 party asserting confidentiality will have the burden of proving the same.

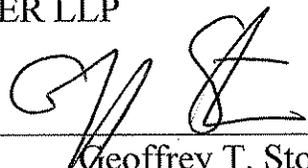
1 18. At the conclusion of this case, unless other arrangements are agreed
2 upon, each document and all copies thereof which have been designated as
3 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall, upon written request,
4 be returned to the party that designated it "CONFIDENTIAL" or "HIGHLY
5 CONFIDENTIAL," or the parties may elect to destroy such documents. Where the
6 parties agree to destroy "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL"
7 documents, the destroying party shall provide all parties with an affidavit confirming
8 the destruction.

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10 19. This Protective Order may be modified by the Court at any time for
11 good cause shown following notice to all parties and an opportunity for them to be
12 heard.

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14 **IT IS SO STIPULATED.**

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16 Dated: July 25, 2007

PAUL, HASTINGS, JANOFSKY &
WALKER LLP

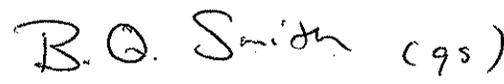
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18 By: 

Geoffrey T. Stover

Attorneys for Defendant
OFFICE DEPOT, INC.

19
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21
22 Dated: July 25, 2007

MADDOX HARGETT & CARUSO

23
24 By:  (qs)

Barbara Quinn Smith

Attorneys for Plaintiff
MARY SANBROOK

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IT IS SO ORDERED.

Dated: 3/23/09

Patricia V. Trumbull

United States District Court Judge
Magistrate